

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 994

IN THE MATTER OF:

Served November 28, 1969

Complaint and Request for)
Rule-Making of Greater)
Washington Alliance to)
Stop Pollution, Inc.)

Formal Complaint No. 22

On August 21, 1969, Greater Washington Alliance to Stop Pollution, Inc. (GASP) filed a formal complaint against all bus companies under WMATC jurisdiction charging them with unwarranted air pollution in violation of the Compact and Commission regulations relating to exhaust emissions. The complaint also sought enactment of any necessary additional rules to prevent aggravation of air pollution problems in the District of Columbia. Seven of the sixteen companies involved filed answers, and six of those seven included motions to dismiss along with their answers to the complaint.

GASP filed an objection to the motions to dismiss, and on October 30, 1969, it filed a motion to set its complaint for hearing. D. C. Transit System, Inc., filed an opposition to this motion on November 12, 1969.

D. C. Transit System, Inc.; Washington, Virginia and Maryland Coach Company; Alexandria, Barcroft and Washington Transit Company; The Gray Line, Inc.; and WMA Transit Company joined to file a single motion to dismiss the original complaint.

The bus companies state that each of the city, county and state jurisdictions within the Metropolitan District have jurisdiction over air pollution problems and that existing laws cover buses and other instruments of pollution. No allegation was made that WMATC is precluded from regulating in this field, however. In fact, the motion of the companies is totally devoid of citations of the laws to which they refer.

The companies urge a number of reasons why, in their opinion, a hearing should not be held. We find these arguments unconvincing. For instance, the motion states that federal authorities, those of every state, and many foreign groups, are studying the air pollution problem. We see no reason, however, why this fact should provide a basis for dismissal. Indeed, we should be able to make use of any findings made by others which might be relevant to Washington area problems. This proceeding will provide a useful means of exploring such studies.

In seeking dismissal, the companies also argue that the Commission staff does not contain experts qualified to pass judgment on the complex subject matter involved. It is, of course, the responsibility of the Commissioners, not the staff, to pass judgment. The staff should assist us in building an adequate record. In this connection, it will be incumbent upon the complainants to present evidence in support of their complaint. The staff can present whatever additional evidence is deemed necessary, either through their own testimony or by engaging outside experts.

The motion further states that the cost of any investigation would be burdensome on bus riders and the companies. However, we have it in our power to assure that the costs of any investigation or of any action required will be only those costs which are reasonable in relation to the problems involved.

The companies also argue that the Commission is precluded from imposing standards more strict than the federal or local requirements presently in existence. Complainant's answer cites the Clean-Air Act, 42 USC 1857(a), for the proposition that the doctrine of pre-emption does not apply in the area of exhaust emissions, where regional cooperation is sought. We also note that the December 1967 Conference for the National Capital Metropolitan Area, held pursuant to that Act, recommended utilization of the powers of this Commission in dealing with control of diesel bus emissions.

In the companies' view, regulation of diesel buses will have little effect on the total air pollution problem,

and would be discriminatory in light of the other presently existing unregulated polluters in the area. We do not feel that this contention provides any ground for dismissal. If, within our powers, reasonable action to deal with pollution is possible, that action should be taken. If movants' argument were acceptable, no one would act on the air pollution problem, the solution to which cuts cross many fields.

Finally, movants argue that no violation of existing rules or regulations upon which relief may be granted was alleged, and that the request for rule making as possible relief does not show inadequacy in present regulations, or a need for expansion of Commission purview. Respondent Eyre's Bus Service, Inc., has also moved for dismissal on the ground that no violation of the Compact or of Commission Rules and Regulations or orders has been shown. We find that the complaint sets out in paragraph 19, et seq., sections of the Compact, regulations and orders which have allegedly been violated and gives sufficient detail as to the nature of those violations to state a claim upon which relief may be granted. Further, the alternative request for rule making is proper in this situation and adequately supported by the complaint.

The motion to set Complaint No. 22 for hearing was filed while the motions to dismiss were before the Commission, and D. C. Transit System, Inc. answered seeking denial of the motion based on this fact. That a motion to dismiss is pending is not in and of itself grounds for dismissal of a duly filed motion, and we will not reject GASP's request for this reason. However, we are of the opinion that this matter can best be expedited by holding a pre-hearing conference to better define the specific matters and issues which we may wish to take evidence on in formal hearing.

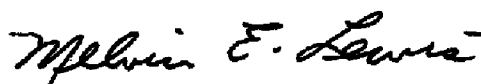
THEREFORE, IT IS ORDERED:

1. That the Motions to Dismiss Formal Complaint No. 22 filed by D. C. Transit System, Inc.; Washington, Virginia and Maryland Coach Company, Alexandria, Barcroft and Washington Transit Company; The Gray Line, Inc.; WMA Transit Company and Eyre's Bus Service, Inc., be, and they are hereby, denied.

2. That the Motion to Set Formal Complaint No. 22 on Hearing Calendar be, and it is hereby, denied.

3. That a pre-hearing conference will be held at 10:00 AM, Thursday, January 8, 1970, in Room 314, 1625 I Street, N.W., Washington, D. C.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in cursive script, reading "Melvin E. Lewis".

MELVIN E. LEWIS
Executive Director